AMO REPORTS 82-17

REPORT ON PROCEDURES WITH RESPECT TO THE ELECTION OF THE WARDEN OF A COUNTY GOVERNMENT

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO
AUGUST 1982

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

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REPORT ON PROCEDURES WITH RESPECT TO THE ELECTION OF THE WARDEN OF A COUNTY GOVERNMENT

The Executive Committee of the County and Regional Section of the Association of Municipalities of Ontario has given careful consideration to the subject of the election of the office of warden of a county government, and to the current practices with respect to this subject as among a number of county governments in Ontario. The Executive Committee did not deal with the question of election of chairmen of regional municipalities since each regional Act deals specifically with this procedure.

Legislation

The principal provisions governing the procedures for election of the warden are contained within the Municipal Act, R.S.O. 1980, Chapter 302, and are set forth as follows:

> **Section 51(1)** The council of a county shall, in each year of its term at its first meeting at which a majority of its members are present, elect one of the members to be warden.
>
> **Section 51(3)** Subject to subsection 4 and to section 62, the warden shall be elected in the manner provided by resolution of the council passed prior to the election.
>
> **Section 51(4)** In case of an equality of votes, the reeve or, in his absence, the deputy reeve of the muicipality which for the preceding year had the largest equalized assessment shall have a second or casting vote.
>
> **Section 62(1)** Except where he is disqualified to vote by reason of interest or otherwise, where a division is taken upon the election of warden or other presiding officer, upon the appointment of an officer of the corporation or upon a by-law, resolution or for any other purpose, each member present shall announce his vote openly and individually, and the clerk shall record it.

> **Section 62(2)** No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken is of no effect.

Issue

The issue is whether or not the council of a county government should be permitted the opportunity to choose a procedure for the selection of the office of warden which, in its opinion, would best suit the needs the council, and perhaps more importantly, is in keeping with the actual traditions and practices of the particular county council. It is evident that the procedures presently being invoked in a number of instances, while maintaining the provisions of the presentlegislation, are not in keeping with the spirit or intention of those provisions.

Contra

The opposing view to an alternate form of voting is perhaps best summarized by an excerpt from the response of the Ministry of Treasury, Economics and Intergovernmental Affairs to a proposal from the County of Northumberland Planning Study (1976) which proposed a "secret ballot" for this purpose.

> The province's view is to encourage an open vote for warden. There is considerable difference between elected representatives exercising their discretion making functions secretly and ordinary citizens exercising their franchise secretly. The ordinary citizen should have privacy so that he will not be intimidated or influenced. Elected representatives should be responsible and accountable to the people who have elected them. Such accoutability is hindered to the extent that government decisions are made secretly or by secret ballot...The province suggests that citizens would wish to know how their representatives voted in the election of warden since he, as head of council, can wield an important influence in the direction the county takes.

Response

The Executive Committee of the County and Regional Section, fully endorses the foregoing principle, that is, as it would apply to the establishment of county government policy or the expenditure of public funds. In these specific instances voting by members of the council should be open to public scrutiny. However, it is suggested that the argument as set forth in the foregoing is not as completely persuasive when applied to the separate issue of election of the warden of the county and the administrative procedures related thereto.

The County and Regional Section sees little difference in the issue of the election of an head of council of a local municipality by ballot and the selection of the head of a county government by the members of that body using the same mechanism. As elected representatives they are accountable and responsible for the conduct of the government under their jurisdiction. They hold the same interests as a citizen towards effective administration of public funds and establishment of public policy. As a result, county council members stand every bit as individuals and as citizens within their political jurisdictions. Therefore, it seems more than appropriate that they be afforded the opportunity to select the person to act as the chief executive officer of the county council by ballot if they so wish.

The system of selection by ballot is principal to the maintenance of our democratic process. It is essential to the well-being of the process and applies in an equal fashion, to the procedures for election to government, to an organization, or in fact, to the election of the head of a polictical party. The fundamental question in this respect is whether or not those who participate within a selection process should have right to be free from the possibility of "intimidation" and "influence" if they so choose.

It is suggested that the response in 1976 from the Ministry of Treasury, Economics and Intergovernmental Affairs that "...citizens would wish to know how their representatives voted in the election of warden..." is in fact an exaggeration of the reality of the situation. For all intents and purposes, the real interest lies within the county council membership and not with the citizenry as a whole. Under the following proposals this opportunity will be accommodated if the county council so decides.

Recommendations

For the foregoing reasons the County and Regional Section recommends that the provisions of the Municipal Act, R.S.O. 1980, Chapter 302, be amended to provide the opportunity to county councils to select the method by which the warden of the county is elected. For this purpose the following proposals are submitted:

1. That Section 51(3) be amended to read as follows:

> **At the first meeting of county council the warden shall be elected in the manner provided by a resolution of the council passed prior to the election.**
>
> **(a) Nothwithstanding Sections 27, 28, and 29 of the Act, for the purpose of the election of warden each member of county council shall have one vote.**
>
> **(b) Sections 62(1) and 62(2) of the Act shall not apply to the procedures for the election of warden.**

Rationale

The foregoing revisions to the legislation would allow county councils to establish their own procedures for the election of warden, which could be contained in a procedural by-law on the subject, and if such is the case, confirmed by resolution immediately prior to the election of warden, so as to comply with the provision of the Act.

It is proposed that the procedural by-law and/or resolution of county council should include the following:

* method of election (open vote or ballot);
* for the purposes of ballot, the appointment of returning officer and scrutineers.

For the purposes of election of warden, each county council member should have one vote. It is felt that the question of the selection of an individual to serve in the important post of chief executive officer of the corporation should not be considered in the same terms as other issues which come before county council, and therefore,

matters relating to assessment and/or population are not appropriate considerations for this important purpose. In addition, the warden will be in a much stronger position to serve as the head of the county council if he knows that he has the support of the majority of the members of that council.

It is noted that Bill 12, An Act to amend the Municipal Act, which received first reading March 11th, 1982, contains a proposed revision to section 62(1) of the Act regarding "recorded votes". The County and Regional Section considered this matter and agreed that under its proposed amendment to section 51(3), as set forth, section 62(1) would not apply.

2. That Section 51(4) be amended to reflect the provisions of the Municipal Elections Act, in the event of an equality of votes, i.e.:

Section 85(1) In the case of an equality of votes for any office for which one person is to be elected, or for which the holding of any other office is to be determined as a result of a recount or final addition, the successful candidate shall be determined by lot conducted by the clerk.

Section 85(2) For the purposes of this section "lot" means the method of determing the successful candidate by placing the names of the candidates on equal size pieces of paper placed in a box and one name being drawn by a person chosen by the clerk.

Rationale

The proposed amendment would provide for uniformity of electoral procedures for tie-vote situations.

Addendum

Subsequent to the circulation of the foregoing endorsed proposal, it was drawn to the attention of the County and Regional Section, that the proposed revision to Section 51(3), as contained on page 4, could create problems for the political participants of the electoral process, if a change in practice were left to the first meeting of the new county council.

After due consideration of the issue, it was agreed that the proposed new provisions should, in some manner, accommodate the principle of adequacy of notice of change where a county council moves to change its procedural by-law with respect to the method of election of warden.

Therefore, the following recommendation has been approved for presentation within this submission:

> **That the legislation contain a provision that an undertaking by the county council to amend the the established procedure for election of the office of warden, shall be by resolution of thecounty council passed not later than the 30th day of September.**

Conclusion

While the County and Regional Section believes that it has addressed the principal elements with respect to its objective, it does not presume, however, that its recommendations as to legislative amendment should be considered as definitive. The Section therefore accepts the proposition that additional legislative refinements may be required in order to attain the desired changes to the present provisions of the Municipal Act.

The County and Regional Section of the Association of Municipalities of Ontario, urges the Minister of Municipal Affairs and Housing, to proceed with the implementation of the recommendations as submitted within the report.

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